

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,203

United States Court of Appeals
For the
District of Columbia Circuit

FILED JUL 29 1959

WILLIAM H. COATES,

Joseph W. Stewart

CLERK
Appellant,

v. **820**

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(i)
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JOINT APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE UNITED STATES OF AMERICA :	
Plaintiff, :	Criminal No. 992-'56
v. :	Grand Jury No. 963-56
THOMAS E. PARKS :	995-56
WILLIAM H. COATES :	Vio. 26 U.S.C. 4704a, 4705a
RICHARD L. SIMMONS :	21 U.S.C. 174
Defendants. :	

CRIMINAL DOCKET

1956 Presentment and Indictment Filed (9 Counts)

Sep. 24 Copy of indictment given to deft. #1 and #2. Cert. filed.

Sep. 28 No. 1 and No. 2: Arraigned, Plea not guilty entered; Case is referred for appointment of counsel; No. 1: Defendant remanded to the District of Columbia jail; No. 2 Defendant on bond. Letts, J. (Reporter--Sweeney) Cert. filed.

Sep. 28 Bench warrant ordered and issued. #3. Letts, J.

Oct. 2 No. 2: Order appointing Lawrence Smith as counsel to defend, filed. Letts, J. (N) Order appointing Carroll F. Tyler as counsel to defend. #1 filed. Letts, J. (N)

Nov. 7 Appearance of H. Clifford Alder as attorney for defendant #2 entered and filed. Appearance of Lawrence Smith as attorney for defendant entered withdrawn (Fiat) Laws, C. J.

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Jan. 8 Plea not guilty withdrawn, plea guilty entered to count nine No. 2 (S174, T.21, USC); Case is referred to the probation officer of the Court;

Deft. #2 committed to the District of Columbia Jail; commitment issued;

Attorney H. Clifford Alder present; copy of letter dated 1/8/57 from Dr. Thomas E. Griffin to Chief Judge Laws re physical condition of deft., filed. Laws, C. J. (Reporter-J. Rawls) Cert. filed.

Jan. 14 No. 2: Information as to previous conviction, filed.

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- Jan. 23 No. 1: Government's oral motion for leave to dismiss counts 1 thru 6 is by the Court granted; Dismissal entered as to counts 1 thru 6; Government elects to proceed to trial on counts 7, 8, and 9; Jurors from Criminal Courts Nos. 1 & 4 sworn on voir dire; Jury sworn:
- Leon C. Brown, Louise E. Mason, Delos C. Wakeman, Margaret L. Combs, Martin J. Mellett, Raymond B. Clift, Frank M. Lanham, Francis C. Nolan, Margaret R. Davis, Mitchel D. Lewis, William J. Smith, Wendell N. Gibbs.
- Two alternate jurors sworn: a.1. Jay H. Haun; a.2. Frank N. Hudson. Case is respited until 10:00 a.m. tomorrow; Deft. remanded to the District of Columbia Jail; statement dated 1/21/56 signed by Richard L. Simmons re knowledge of case, filed. Attorney Carroll F. Tyler present. Laws, C. J. (Reporter-J. Rawls) Cert. filed.
- Jan. 23 No. 3: Government's oral motion for leave to dismiss is by the Court granted; Dismissal entered; defendant discharged; Laws, C. J. (Reporter- J. Rawls) Cert. filed.
- Jan. 24 No. 1; Trial resumed; same jury; arguments of counsel, charge of court, alternate jurors excused; verdict: Guilty as charged on counts 7, 8, and 9; jury polled. Case is referred to the probation officer of the court; Deft. remanded to the District of Columbia jail; attorney Carroll F. Tyler present. Court orders food for jury. Laws, C. J. (Reporter-J. Rawls) Cert. filed.
- Mar. 8 No. 1: Thomas E. Parks; sentenced to imprisonment for fifteen (15) months to five (5) years and to pay a fine of one hundred dollars (\$100.00) on each of counts 7, 8 and 9; said sentence by the counts to run concurrently. Court recommends commitment to Lexington, Ky. Deft. remanded to the District of Columbia jail; attorney Carroll F. Tyler present. Laws, C. J. (Reporter - J. Rawls)
- Mar. 8 No. 2: William H. Coates: sentenced to imprisonment for a period of three (3) years to twelve (12) years and to pay a fine of one hundred dollars (\$100.00). Government's oral motion for leave to dismiss remaining counts is by the Court granted; dismissal entered as to remaining counts; attorney H. Clifford Alder present. Laws, C. J. (Reporter - J. Rawls) Cert. filed.
- Mar. 8 No. 1: Judgment and commitment of 3/8/57, filed. Laws, C.J.

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Mar. 8 No. 2: Judgment and commitment of 3/8/57, filed. Laws, C.J.

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Jan. 30 No. 3: Bench warrant issued 9/28/56, filed. (Case dismissed 1/23/57).

Oct. 30 No. 2: Motion of defendant to vacate sentence and set aside conviction as provided by Title 28, Sec. 2255, filed. Cert. of Serv. (Prepared by Deft.)

Nov. 10 No. 2: Opposition of Government to Deft's. motion to vacate sentence pursuant to Sec. 2255, Title 28, U.S. Code, filed.

Nov. 13 No. 2: Denial of motion of defendant to vacate sentence and set aside conviction as provided by T. 28, U.S. Code, Sec. 2255, filed. The court finds and certifies that the motion and the files and the records of the case conclusively show that the deft. is entitled to no relief. Letts, J. (N)

Nov. 17 No. 2: Answer of Defendant to Government's opposition to Defendant's motion to vacate sentence pursuant to Sec. 2255, Title 28, U.S. Code, filed. (Prepared by Deft.)

Nov. 21 No. 2: Affidavit of defendant for leave to proceed on appeal, without prepayment of costs from denial of motion to vacate sentence, etc., pursuant to T. 18, USC, Sec. 2255, filed. (prepared by deft.)

Nov. 25 No. 2: Denial of application of defendant for leave to proceed on appeal without prepayment of costs from denial of motion to vacate sentence pursuant to T. 18, U.S. Code, Sec. 2255, filed. Appeal is frivolous, without merit and not taken in good faith. Letts, J. (N)

1959

Jan. 21 No. 1, 2: Transcript of Proceedings, Vol. 1, pages 1-11, January 8, 1957, filed. Court of Appeal's copy (Reporter-Rawls)

Jan. 27 No. 1, 2: Transcript of Proceedings, Pages 1 to 11, January 8, 1957, filed. Clerk's copy. (Reporter-Rawls)

May 11 No. 2: Certified copy of order from the U. S. Court of Appeals allowing deft. to proceed on appeal without prepayment of costs from the order of the District Court entered herein Nov. 13, 1958, filed. Dated 5/8/59. Appeal noted.

[Filed in open court Sept. 24, 1956]

[INDICTMENT]

The Grand Jury Charges:

On or about February 17, 1956, within the District of Columbia, Richard L. Simmons did sell, barter, exchange and give away to Melvin H. Fleming a narcotic drug, that is, two capsules containing a mixture totaling about 2.1 grains of heroin hydrochloride, quinine hydrochloride and milk sugar, not in pursuance of a written order, written for that purpose, from the said Melvin H. Fleming, as provided by law.

SECOND COUNT:

On or about February 17, 1956, within the District of Columbia, Richard L. Simmons purchased, sold, dispensed and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, two capsules containing a mixture totaling about 2.1 grains of heroin hydrochloride, quinine hydrochloride and milk sugar. This is the same heroin hydrochloride which is mentioned in the first count of this indictment.

THIRD COUNT:

On or about February 17, 1956, within the District of Columbia, Richard L. Simmons facilitated the concealment and sale of a narcotic drug, that is, two capsules containing a mixture totaling about 2.1 grains of heroin hydrochloride, quinine hydrochloride and milk sugar, after the said heroin hydrochloride had been imported, with the knowledge of Richard L. Simmons, into the United States contrary to law. This is the same heroin hydrochloride which is mentioned in the first and second counts of this indictment.

FOURTH COUNT:

On or about March 13, 1956, within the District of Columbia, Thomas E. Parks and Richard L. Simmons did sell, barter, exchange and give away to Melvin H. Fleming a narcotic drug, that is, two capsules containing a mixture totaling about 2.2 grains of heroin hydrochloride and milk sugar, not in pursuance of a written order, written for that purpose, from the said Melvin H. Fleming, as provided by law.

FIFTH COUNT:

On or about March 13, 1956, within the District of Columbia, Thomas E. Parks and Richard L. Simmons purchased, sold, dispensed and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, two capsules containing a mixture totaling about 2.2 grains of heroin hydrochloride and milk sugar. This is the same heroin hydrochloride which is mentioned in the fourth count of this indictment.

SIXTH COUNT:

On or about March 13, 1956, within the District of Columbia, Thomas E. Parks and Richard L. Simmons facilitated the concealment and sale of a narcotic drug, that is, two capsules containing a mixture totaling about 2.2 grains of heroin hydrochloride and milk sugar, after the said heroin hydrochloride had been imported, with the knowledge of Thomas E. Parks and Richard L. Simmons, into the United States contrary to law. This is the same heroin hydrochloride which is mentioned in the fourth and fifth counts of this indictment.

SEVENTH COUNT:

On or about March 21, 1956, within the District of Columbia, Thomas E. Parks and William H. Coates did sell, barter, exchange and give away to Melvin H. Fleming a narcotic drug, that is, two capsules containing a mixture totaling about 2.6 grains of heroin hydrochloride, milk sugar and mannitol, not in pursuance of a written order, written for that purpose, from the said Melvin H. Fleming, as provided by law.

EIGHTH COUNT:

On or about March 21, 1956, within the District of Columbia, Thomas E. Parks and William H. Coates purchased, sold, dispensed and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, two capsules containing a mixture totaling about 2.6 grains of heroin hydrochloride, milk sugar and mannitol. This is the same heroin hydrochloride which is mentioned in the seventh count of this indictment.

NINTH COUNT:

On or about March 21, 1956, within the District of Columbia, Thomas E. Parks and William H. Coates facilitated the concealment and sale of a narcotic drug, that is, two capsules containing a mixture totaling about 2.6 grains of heroin hydrochloride, milk sugar and mannitol, after the said heroin hydrochloride had been imported, with the knowledge of Thomas E. Parks and William H. Coates, into the United States contrary to law. This is the same heroin hydrochloride which is mentioned in the seventh and eighth counts of this indictment.

/s/ Oliver Gasch

Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

/s/ P. S. MATTHEWS

Foreman.

[Filed Jan. 27, 1959]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

United States of America

v.

Washington, D. C.

January 8, 1957

Thomas E. Parks & William H. Coates

1 The above-entitled matter came on for trial before the Honorable Bolitha J. Laws, Chief Judge, United States District Court, at 9:30 o'clock a.m.

APPEARANCES:

On behalf of the Government:

HAROLD H. TITUS, JR.

Assistant United States Attorney.

On behalf of the Defendant Thomas E. Parks:

C. F. TYLER, ESQ.

On behalf of the Defendant William H. Coates:

H. C. ALLDER, ESQ.

PROCEEDINGS

2 THE DEPUTY CLERK: United States v. Parks and Coates, Criminal No. 992-56.

MR. TITUS: We will announce ready, Your Honor.

MR. ALLDER: I represent the Defendant Coates, Your Honor, and it is my intention to enter a plea to the count that I have discussed with Mr. Titus but I find the Defendant, in my opinion, is under the influence of narcotics this morning and going to be committed to a hospital and have some kind of treatment so I want to be absolutely sure he is in his right mind when he enters a plea of guilty, but, in my opinion, he has been using narcotics.

I have had a preliminary hearing. I know the facts in the case and it is justifiable to agree to a plea to it. I have talked to a friend of his and he tells me he has been using narcotics.

THE COURT: Is he here?

MR. ALLDER: Yes, he is here, Your Honor.

THE COURT: Your idea is to commit him, is that correct?

MR. ALLDER: Commit him to the hospital for treatment so when he pleads guilty, he cannot come back and say he did not understand.

THE COURT: How do I commit him?

3 MR. TITUS: We were talking about it, Your Honor.

THE COURT: Why don't we let the bondsman surrender him and then can't the jail take care of him?

MR. ALLDER: If Your Honor directs it.

THE COURT: I don't know how to do it. If you tell me how to do it, I will do it.

MR. ALLDER: May we pass it a few minutes?

THE COURT: You are on trial?

MR. ALLDER: Yes, Your Honor, but I will be through about 10:30. There are only the instructions to the jury and I don't think it will take more than half an hour to charge the jury.

THE COURT: Is the other defendant going to trial?

MR. TITUS: I heard he was going to plead. Mr. Tyler told me he would plead him to the same count.

THE COURT: I suppose we could plead him and then

if we have any doubt -- I don't know. If we have any doubt about his ability to understand, does he talk intelligently?

MR. ALLDER: As I say, I have talked to people under the influence of narcotics and I think he is.

THE COURT: Is the bondsman here?

MR. ALLDER: Mr. Conroy is here. I don't know whether he knows about it or not. I have not talked to him about it.

4 THE COURT: Let's ask Dr. Griffin upstairs to look at him and see if he is sufficiently conscious to enter a plea and then, if he says he is not, I guess we will have to figure some way to handle this.

MR. TITUS: He is on bond, is he?

MR. ALLDER: Yes.

MR. TITUS: If Dr. Griffin says he is not, that he would need to recover, if he would surrender and then enter a plea later on.

THE COURT: Of course, he is here, though. That does not make much sense. You have got a provision for voluntary commitment, haven't you?

MR. TITUS: There is a provision in the law for that.

THE COURT: It may be there is a provision for involuntary commitment.

Mr. Conliff, will you come here a minute, please? Is there a provision for involuntary commitment for narcotics?

MR. CONLIFF: Only if the defendant is not charged with crime, Your Honor.

THE COURT: He is charged with crime in this case and it may be he is willing to plead and Mr. Alder is willing to plead him but thinks he is under the influence of narcotics this morning.

5 I think Dr. Griffin ought to look at him to see if he is conscious enough to plead and if he isn't --

MR. CONLIFF: The unfortunate thing is about this narcotics addict law, there is provision in there if he is charged with crime, the facilities cannot be utilized.

THE COURT: Cannot use the hospital?

MR. CONLIFF: Apparently not, unless the hospital takes him. Of course, they can take him. I should think the hospital would take him. I mean there is nothing to preclude the doctor at the jail sending him over there.

THE COURT: I have always felt that a man who comes here, either drunk or full of narcotics and not able to be tried or offers an affront to the Court--I suppose I could commit him under a charge of contempt if he got himself wilfully hopped up and he is frustrating the cause of justice.

MR. CONLIFF: I suggested this morning, if Your Honor would make a recommendation to the Marshal, that the man be hospitalized and I would call the Superintendent of the jail and see if they can't arrange that.

THE COURT: I will do that.

MR. ALLDER: Suppose you have the doctor look at him.

THE COURT: You know Dr. Griffin?

6

MR. TITUS: Yes.

THE COURT: Ask him to look at this man and see if he is conscious enough to plead. If he is not, Mr. Conroy can surrender him and he can be committed. It is all in his interest. If he stays out, he is going to get bad again.

MR. ALLDER: Of course, every time he has been due here he has shown up.

THE COURT: I think I could adjudicate him in contempt if Dr. Griffin tells me he has reported to the Court full of narcotics.

MR. ALLDER: Apparently he is not making any attempt and he is willing to do whatever I tell him.

THE COURT: But he is hopped up. They are stopping the Court. I don't have to give him a long sentence but to get him in the hospital.

You figure out some way and I will be glad to cooperate but I think we ought to get rid of it.

I will tell you what I will do: I will double his bond. Of course, you say he has shown up--

MR. ALLDER: May I suggest this: I will tell the bondsman not to let him out of his sight and check with the doctor.

THE COURT: Check with the doctor. I am willing to cooperate but in the meantime, I think you had better get in touch with Dr. Griffin.

7

Mark it ready.

* * * * *

MR. TITUS: May I address the Court?

THE COURT: Yes.

MR. TITUS: In the case of United States v. William H. Coates, et al, which is Criminal No. 992-56, this morning Your Honor asked that Dr. Griffin of the Legal Psychiatric Department examine the Defendant Coates to determine whether or not he was competent at that time to proceed with the case pending against him in that he was possibly under the influence of narcotics.

Dr. Griffin has submitted a copy to the Court in which he states that, in his opinion, the Defendant Coates is well enough of control to plead to the charges pending against him. As I understood, that was the proposition this morning, to determine whether he was competent to do that.

THE COURT: All right.

MR. ALLDER: The last paragraph says something about, "It is my further opinion he will begin to suffer from symptoms of the withdrawal of drugs."

THE COURT: I will take care of that. What about the other Defendant?

8

MR. TITUS: I understand that Mr. Tyler was rather indefinite but at first he indicated there was going to be a disposition but later he changed that.

THE COURT: You want us to dispose of yours at this time, Mr. Allder?

MR. ALLDER: Yes, Your Honor.

MR. TITUS: May I point out to the Court that in this case, the Defendant Coates, who is now here, is charged in several counts of the indictment. There are a total of nine counts in the indictment, all narcotic violations.

The Government is going to proceed against the case at trial, that of Parks, only on the last transaction occurring on March 19, 1956, because of the fact another co-defendant, Simmons, is presently unable to go to trial because he is serving a life sentence for first degree murder.

Consequently, Mr. Alder indicated the Defendant Coates would plead to Count 9 of the indictment which is satisfactory. That constitutes the last transaction.

THE COURT: You say he is involved in other charges?

MR. TITUS: He is involved in other counts in the indictment. However, in the other counts in which he is involved, there is another defendant named Simmons. The Government did not bring the co-defendant Simmons here because he is serving a life sentence.

THE COURT: You think this is an adequate disposition of this case?

MR. TITUS: Yes, Your Honor.

THE COURT: Mr. Coates, your counsel has explained to you what this is about, has he?

THE DEFENDANT: Yes, sir.

THE COURT: And you are fully familiar with what you are pleading guilty to, is that right?

THE DEFENDANT: Yes, sir.

THE COURT: And the doctor has been over you today and he says that you have had some narcotics but that he thinks you know perfectly well what you are doing. You do?

THE DEFENDANT: Yes, sir.

THE COURT: You understand everything that is going on?

THE DEFENDANT: Yes, sir.

THE COURT: And you are, therefore, pleading guilty to Count 9 which charges you with violation of the narcotic laws because you are guilty and for no other reason whatever?

THE DEFENDANT: Yes, sir.

MR. TITUS: I said this defendant was involved in other counts. It is the co-defendant Parks who is involved in the other counts.

THE COURT: All right.

THE DEPUTY CLERK: William H. Coates, in Criminal 992-56,
you are charged with violation of the Federal Narcotic Laws. Do you wish
10 to withdraw your plea of not guilty and enter a plea of guilty to
Count 9 of the indictment?

THE DEFENDANT: Yes, I do.

THE COURT: The case will be referred to the Probation Officer.
Let him be committed and I would like you to send down to the jail a copy
of this report, together with my recommendation, that this man be given
hospitalization. I guess I will send the original and I will sign it.

MR. ALLDER: Might I suggest one thing, Your Honor?

THE COURT: Yes.

MR. ALLDER: Would you recommend immediate hospitalization?

THE COURT: Yes.

MR. ALLDER: In other words, they could interpret that report
and would Your Honor go further and recommend hospitalization at D. C.
General Hospital? I understand they don't have facilities at the jail.

THE COURT: I would rather stop there. I don't want to go too far
but tell them to telephone me.

MR. ALLDER: Yes, Your Honor.

(Whereupon, the hearing was concluded.)

[Filed Jan. 8, 1957]

January 8, 1957

Legal Psychiatric Services
Division, Room 6421
U. S. Courthouse
Washington 1, D. C.

Re: William H. Coates
Colored - Male
56 Years old

Honorable Bolitha J. Laws
Chief Judge
United States District Court for the
District of Columbia

My dear Judge Laws,

In accordance with Your Honor's order of this date, I conducted an
examination of the above-named William H. Coates.

As a result of that examination, it is my opinion that the said William H. Coates is a user of narcotic drugs, that he last used such drugs about 9:15 a.m. today and that he was, about 11:00 a.m., mildly under the influence of narcotics. It is my opinion, however, that he is well enough in control of his faculties to be able to understand the proceedings against him, to assist in his own defense, and to plead to the charges pending against him.

It is my further opinion that he will soon begin to suffer from symptoms of withdrawal from drugs and that these symptoms will reach their maximum in about 24 hours. From a medical viewpoint, therefore, he should be admitted to a hospital for treatment during this withdrawal period.

Respectfully submitted,

Thomas E. Griffin, M. D., Chief,
Legal Psychiatric Services

TEG:ta

[Filed Jan. 24, 1957]

United States vs. #1-Thomas E. Parks, Defendant

On this 24th day of January, 1957 came again the parties aforesaid, in manner as aforesaid, the same jury as aforesaid in this cause, the hearing of which was respited yesterday; whereupon, after hearing the arguments of counsel and the charge of the Court the alternate jurors are excused; thereupon, the jury upon their oath say that the defendant is guilty as charged on Counts 7, 8 and 9 of the indictment; whereupon, each and every member of the jury is asked if that is his or her verdict and each and every member thereof say that the defendant is guilty as charged on Counts 7, 8 and 9 of the indictment.

The case is referred to the Probation Officer of the Court and the

defendant is remanded to the District of Columbia Jail.

By direction of
 Bolitha J. Laws
 Presiding Judge
 Criminal Court # Assign.
 HARRY M. HULL, Clerk
 By Paul A. Roser
 Deputy Clerk

Present:
 United States Attorney
 By Harold Titus
 Assistant United States Attorney
 J. Rawls
 Official Reporter

[Filed Mar. 8, 1957]

JUDGMENT AND COMMITMENT

On this 8th day of March, 1957 came the attorney for the government and the defendant appeared in person and by counsel, H. Clifford Alder, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty of the offense of Violation of Section 174, Title 21, United States Code as charged in Count Nine and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Three (3) years to Twelve (12) and to pay a fine of One Hundred (\$100.00) Dollars.

IT IS ORDERED that the Clerk deliver a certified copy of this

judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Bolitha J. Laws

United States District Judge

* * * * *

[Filed Oct. 30, 1958]

**MOTION TO VACATE SENTENCE AND SET
ASIDE CONVICTION AS PROVIDED BY TITLE
28, SECTION 2255.**

Comes now you petitioner William H. Coats pro se in proper person deposes and say that he is confined in Lorton Reformatory, Lorton, Virginia.

That this motion is pursuant to title 28, section 225, U.S.C.A. and moves this Honorable Court to vacate sentence imposed in Criminal Case No. 992-56, William H. Coates vs. United States and as cause therefore show the Honorable Court as follow:

That your petitioner is a citizen of the United States and over twenty one (21) years of age. That your petitioner is a layman and a formal paupers, having gotten money or friend to pay the cost of court.

That the jurisdiction of this honorable court to issue such process of law is invoked under the due process of law is invoked under the due process of law under criminal procedure anti-date is call to the following citation.

"Walker vs. Johnson, 312 U.S. 2 75:61 Cf. 85 BL. 83;
Carter vs. Woodring, 67 App. 393; United States vs. Mc-
Donald, 265 Fed. 756; Johnson vs. Zerbest, 304 U.S. 45;
Frank vs. Mangus, 35 Ct. 582-590.

Your petitioner was charged in a three count indictment. That on or about June 20, 1956, your petitioner was arrested for violation title 26, section 4704(a) and 4705(a); your petitioner was indicted for the alleged crime and on the 8th day of March 1957 came the attorney for the

Government and the defendant appeared in person and by counsel H. Clifford Alder, Esq. It is adjudged that the defendant has been convicted upon his plea of guilty of the offence of violation of section 174, title 21, United States Code. Your petitioner was sentence to three (3) years to twelve (12) years and to pay fine of one hundred (100.00) dollars by Judge Bolitha J. Laws.

[Filed Nov. 13, 1958]

November 13, 1958

ORDER

The Court finds and certifies that the motion and the files and the records of the case conclusively show that the prisoner is entitled to no relief. The motion is therefore denied.

/s/ F. Dickinson Letts
Judge

Application For Leave to Proceed Without Pre-
payment of Costs

I, William H. Coates, being first duty sworn according to law depose and said that I am the petitioner in the attached entitle cause, and in support of application for leave to proceed without prepayment of cost state as follows:

- I. That I am a citizen of the United States of America and over 21 years of age.
- II. That because of my poverty, I am unable to pay the cost of said action in court.
- III. That I am unable to give security for the same.
- IV. That I believe that I am entitled to the redress I seek in said cause is as follows:

That my cause of action is meritorious and not frivolous. That I have a point of law to be decided by this court; that your petitioner is a

layman in the greatest degree and need counsel in this matter.

/s/ William H. Coates

(JURAT)

I

QUESTIONS PRESENTED

Whether petitioner's conviction should be set aside on the grounds of entrapment as a matter of law.

II

Whether your Petitioner intelligence pleaded guilty when he was under the influence of narcotic and could not properly assist his trial attorney.

FACT INVOLVED

In March 1956 your petitioner was standing in the 600 block of T Street, N. W., Washington, D. C. A man by the name of Parks came to me and asked me if I knew anywhere to get him six (6) capsules of heroin I asked him "don't you know where to get some dope? he said" Diedome and the police had raided 14th Street the night before and he had been up there in the morning, and none of the peddlers had been around. He said that he was sick and he asked me if I knew where to purchase some narcotics and would I do him the favor and I told him I would try. I said that I would have to go to 18th and S St., N. W., Washington, D. C. and he answered and said that he had his friend with him and that he would carry us up there in his car and when we got to 18th and S St., N. W. your petitioner told him to drive to the middle of the block on Swann Street, between 18th and 19th Street, N. W. I got out of the car and went around 19th Street, N. W. and purchased six (6) capsules of heroin. I came back to the car and on the way to 2nd and Bryant Street, where Parks lived I gave Parks the six (6) capsules of heroin. After our arrival, we three went in to Parks house and there is where Parks gave his friend two (2) caps of heroin then he gave me two (2) caps of heroin immediately I gave the two (2) caps of heroin back to Parks.

The officer, Melvin H. Fleming, testified that he gave Parks three

dollars to purchase him two (2) caps of heroin and then he brought Parks to find me so that I could purchase Parks some narcotic in which I did. The officer also testified that I did not sell narcotic, but he did see me give Parks six (6) caps of heroin after he and Parks carried me to 18th and S St., N.W. to purchase narcotic for Parks. The officer also testified that he has never saw me but twice, the first time that he saw me Parks brought him to me to discuss some number business, the second time that he saw me he brought Parks to find me to purchase some some narcotic and at that time we never had any conversation about any narcotic.

The officer also testified that he had never given me any money and that I have never given him any narcotic and never had a conversation with him about narcotic only conversation that he had with me on both occasions is discussing the number business and your petitioner tried to get the (officer) which he didn't know to pick up numbers for him and he also testified that I didn't sell narcotic, all that I was interested in was the numbers business.

This statement can be proved by two (2) of my witness they are my bondsman Mr. Ike Jones and my lawyer Mr. H. Clifford Allder, Esq. When your petitioner pleaded guilty to alleged crime, Judge Bolitha J. Laws had your petitioner examined by the Doctor to determin if he had been using narcotic and the doctor stated that your petitioner was under the influence of narcotic the day that your petitioner pleaded guilty.

After the crime was completely committed, Parks and his friend brought me from 2nd and Bryant Street, N.E., to Georgia and Florida Ave., N.W. that is where I got out. They then went toward 14th and Florida Ave. and I didn't hear anything about this crime that I had committed until three months later.

When your petitioner was arrested for this crime, he did not have any money to make bond with until Mr. Ike Jones, a bondsman got me out on trust.

I have not used any narcotic for the period of five (5) or six (6) years, and by being discussed with myself, I began using narcotic again.

THE FACT AND POINT OF AUTHORITY

Whether your petitioner's conviction should be set aside on the

ground of entrapment as a matter of law.

Your petitioner aver from the record that it is clear that your petitioner did not ask Parks or the police did they want to buy any narcotic and you petitione was not soliciting trade for the narcotic traffic. Your petitioner was entrapt by the police to commit a defence against him United States and also by Parks though sympathy as the petitioner knew what pain a dope phene suffer without drugs and this could be so sevear that his life would be in danger without it.

Your petitioner was entrapt as a spider would build his web and wait until some unfortunate fly would be entrapt in his web and the spider would draw him in his nest and suck the blood out of him.

The record should show that your petitioner did not have no intent to commit a crime in the intent case or was waiting for an opportunity to commit a crime. Your petitioner will show below from the United Commissioner record of proceeding in 992-56 "Melvin H. Fleming, Pvt. Narc. sgd. M.P.D.C. witness payroll containing name certified to the United States Marshal for payment, _____ 19.

Proceeding taken witness fleming testified that he knows the defender as Willie; that he picked up Parks on 14th St. and brought him looking for your petitioner so that he could purchase some narcots for Parks on March 21, 1956 about 2:15 P.M. in the 600 block of T St., N. W. Parks seen me turn into Wilburg St. then he jumped out of the car and ran around the corner and caught me and that is when he asked me to purchase some narcotic, after the conversation of Parks and I, he gave me the money to purchase the narcotic before we went back to the car, then we drove to 18th and S St., N.W., then I told him to drive in the middle of Swann St., N.W. and then the petitioner got out of the car. The defendant returned to the car in about five (5) minutes. Then we drove to Parks home at 2nd and Bryant Street, N. E., on the way to Parks home I gave him (Parks) the six (6) capsuls that I had purchas for him. After we were in Parks house Parks open the napkin that I had gave him. He gave his friend two (2) caps and gave me two (2) caps, Immediately, I gave him the two (2) caps back and said that I didn't want any. Parks went upstairs. I presumed to use the narcotic, then Parks friend emptied 2 caps

of white powder on a piece of paper, he began to use it and then we began talking about the number racket and at that time I gave him some number cards and then my home address.

The two (2) caps that he took from Parks he conducted a preliminary field test which was positive by color reaction for the presence of a narcotic alkaloid of the opiate.

Your petitioner was given two (2) caps and wouldn't expect to use for himself as a dope phene would do.

It is hard to conceive that the:

Government furnish money for the police to snare citizen with no intent to commit a crime.

It is well settle by leading doctors that a dope phene is a sick man in mind, body and soul, and should be sent to a hospital. Why, because he can't think, and the police use psychological pressure on a dope phene, who have not got mental freedom and snare him to commit a crime, is a clear case of entrapment.

In *Sherman v. United States* No. 87, October term, 1957 [decided May 19, 1958] the Supreme Court settle "finally Kalchinian asked petitioner if he knew a good source of narcotic. He asked petitioner to supply him with a source because he was not responding to treatment from the first. Petitioner tryed to avoid the issue. Not until after a number of the petitions of the request predicated on Kalchinian's presumed suffering did petitioner finally acquiesce several time there after he obtained a quantity of narcotic which he shared with Kalchinian. That the total cost of narcotics he obtained was twenty-five dollars and that Kalchinian owed him fifteen dollars, the informer thus bore the cost of his share of the narcotics plus the taxi and other expenses necessary to obtain the drug, after several such sales Kalchivian informed agents of the Bureau of Narcotics that he had another seller for them on three occasions during November 1951. Government agents observed petitioner give the narcotics to Kalchinian in return for money.

SUPPLIED BY THE GOVERNMENT

At trial the factual issue was whether the informer had convinced an

otherwise unwilling person to commit a criminal act or whether petitioner was already predisposed to commit the act and exhibited only the natural hesitancy of one acquainted with the narcotics trade.

Your petitioner case is more in point of entrapment than "Sherman" case.

In *Sorrells v. United States* 287 U.S. 435, this court firmly recognized the defence of entrapment in the Federal Courts. The intervening years have in no way detracted from the principles underlying that decision. The function of law enforcement is the prevention of crime and the apprehension of criminals manifestly. That function does not include the manufacturing of crime. Criminal activity is such that stealth and strategy are necessary weapons in the arsenal of police officer. However, a different question is presented when the criminal design originates with the officials of the Government and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they prosecute" 287 U.S. at 442.

Then stealth and strategy become as objectionable police methods as coerced confession and the unlawful search. Congress could not have intended that its statutes were to be enforced by tempting innocent persons into violations.

If there is no intent to commit a specific crime and the record show that the police indicated the intent in the mind of the defender the indictment is defected and a fraud.

DEFECTIVE INDICTMENT THAT
COME UNDER TITLE 28, SECTION
2255

"The rule is that, an indictment, the sufficiency of which is not questioned on the trial which will not be held in sufficient on a motion to vacate the judgment entered thereon unless it is so obviously defective that by no reasonable constructive can it be said to charge the offense for which conviction was had"

Rfer v. United States 158 Fed. 2d (4th Cir., 1946) Cert. denied 329 U.S. 815 (1947) See also Lucas v. United States, 158 F. 2d 865 (4th Cir. 1946) Cert. denied 330 U.S. (1947); Barnes v. United States 197 F.2d 271 (8th Cir. 1952), Keto v. United States, 189 F.2d 247 (8th

Cir. 1951); Bowley v. United States, 191 F.2d 949 (8th Cir. 1951)

INTENT IN CRIMINAL LAW

Your petitioner did not approach the police or Parks and asked them to buy any narcotic and your petitioner did not make any profit out of the transaction and that the record at the Commissioner's office should show that the petitioner did not make any profit out of the transaction. The whole matter was a fraud to snare your petitioner to commit a crime which your petitioner had no desire to commit, or any intent to commit.

Although "Intent" is the very essence of offences based on disolity." Cr. Cramer v. United States, 325 U.S. 7, Haupt v. United States, 330 U.S. 631. Where innocence of intention will defeat a charge even of treason. The court stated in Morrisett v. United States, 342 U.S. 246, The Government ask us by a feat of construction radical to change the weights of balance in the scales of justice. The purpose and obvious effect of doing away with the requirement of a guilty intent is to ease the prosecution path to conviction. To strip the defendant of such benefit as he at common law from innocence of evil purpose. The sefrit of the doctrine of which denies to the federal judiciary power to create crime forthrightly United States v. Hudson and Goodwin 7 Cranch 32, United States v. Goodwin, 12 Whedt 460.

Judge Spears in Burns v. State, 75 Ohio St. 407:

"We are not concerned to inquire as to the guilty or not he was entitled as every person charged with a crime to a fair trial."

The record reflect on its face the bare fact that your petitioner did not intentionally plead guilty due to the influence of drug. Because the court had your petitioner examined before he pleaded guilty and your petitioner was taken upstairs to the doctor for him to examine your petitioner before he plead guilty and the doctor's report will show that your petitioner was under the influence of narcotic.

Therefore the plea of guilty was not intentional made and it was an error for the court to except such a plea when the doctor's report forwarded down the stair certifying that your petitioner was under the influence of

narcotic. Therefore you petitioner could not wave his constitutional right that is guaranted by the 6th amendment of due process of law.

Your petitioner pray for a hearing to come the surface in the validity of my conviction that the Honorable Court subponea the bondsman; the police in the intent case and my trial attorney. The honorable court have this jurisdiction as provided by the Supreme Court. See United States v. Hayman U.S. 205, 1952. Decided January 4, 1957. The police stated under oath that your petitioner was not interested in selling narcotic nor was your petitioner selling narcotic.

Respectfully submitted

/s/ William H. Coates

(JURAT)

(CERTIFICATE OF SERVICE)

November 13, 1958

William H. Coates
Box 25
Lorton, Virginia

United States
In re: vs. Crim. 992-56
William H. Coates

Sir:

You are advised that your motion to vacate sentence and set aside conviction as provided by 28 U.S.C. 2255, filed Oct. 30, 1958, was denied by Judge F. Dickinson Letts on this date as follows: The Court finds and certifies that the motion and the files and the records of the case conclusively show that the prisoner is entitled to no relief. The motion is therefore denied."

HARRY M. HULL, Clerk

By /s/ H. M. Dodd
Deputy Clerk

[Filed Nov. 17, 1958]

Answer to Governments Opposition to Defendant's Motion to Vacate Sentence Pursuant to Section 22 55, Title 28, U.S. Code.

Comes now William H. Coates in answer to Governments opposition, and

says:

1. The reason why the complaint of entrapment wasn't mention until now is because I didn't have any money to hire a lawyer to make the complaint of entrapment until I've learned how to make the complaint myself.

If I had had any money the complaint would have been made.

By being under the influence of narcotic and wasn't of sound mind, and couldn't instruct my lawyer like I should have.

By being under the influence of narcotic before I entered my plea of guilty. If I hadn't been under the influence of narcotic, I would have had the knowledge to assist my lawyer.

/s/ William H. Coates

(JURAT)

[Filed Nov. 21, 1958]

Application for leave to proceed on appeal without prepayment
of Costs from Denial of Motion to Vacate Sentence under 28 U.S.C. 2255

[Denial of mo. to vacate sentence, etc., pur. 18 USC 2255]

I, Williams Coates being first duty sworn on oath according to law depose and say that I am the petitioner in the above entitled cause states as follows:

1. That I am a citizen of the United States.
2. That because of my poverty I am unable to pay the cost of said action.
3. That I am unable to give security for the same.
4. That I believe I am entitled to the redress I seek in said action.
5. That the nature of the said action is as follows: To proceed in said action in conformity with the law.

1. The Petitioner further says, the record will show that the Government accepted the plea of guilty knowing that the petitioner was under the influence of drugs.

2. The reason why the complaint of entrapment wasn't made until now is because I didn't have any money to hire a lawyer to make the complaint of entrapment until I've learned how to make the complaint myself.

If I had had any money the complaint would have been made.

/s/ William H. Coates

(JURAT DATED Nov. 18, 1958)

November 25, 1958

William H. Coates
Box 25
Lorton, Virginia

Sir:

You are advised that your application for leave to proceed on appeal without prepayment of costs from the denial of your motion to vacate sentence pursuant to 28 U.S.C. 2255 by Judge F. Dickinson Letts on November 13, 1958, was denied by Judge Letts on this date as follows:
"Denied--Appeal is frivolous, without merit and not taken in good faith."

HARRY M. HULL, Clerk

By /s/ H. M. Dodd

Deputy Clerk

[Filed Nov. 25, 1958]

NOTICE OF APPEAL

Comes now the petitioner Williams Coates PrSe in proper person deposes and say that he appeal to the United States Courts of Appeals from the decision that was handed down by Hon. Judge F. Dickinson Letts on the 13 day of November 1958, in favor of the Government.

/s/ William H. Coates

(JURAT dated Nov. 18, 1958)

(CERTIFICATE OF SERVICE)

Nov. 25, 1958

Appeal is frivolous, without merit and not taken in good faith. Leave to proceed on appeal without prepayment of costs is denied.

/s/ F. Dickinson Letts, Judge

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,203

WILLIAM H. COATES, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

OLIVER GASCH,

United States Attorney.

CARL W. BELCHER,

JOHN PHILIP SMITH,

Assistant United States Attorneys.

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED SEP 18 1959

Joseph W. Stewart

CLERK

QUESTIONS PRESENTED

In the opinion of the appellee the following questions are presented:

1. Has appellant satisfied the burden, which is his under 28 U.S.C., Section 2255, of showing that his plea of guilty should be withdrawn or that the judgment of guilty by the court below should otherwise be vacated because:

(a) Manifest injustice occurred when the trial court accepted the guilty plea of appellant at a time when, although mildly under the influence of narcotics, he was, according to a highly qualified doctor, after conducting an on-the-spot examination, well enough in control of his faculties to be able to understand the proceedings pending against him, to assist in his own defense, and to plead to the charges pending against him?

(b) Appellant was entrapped into committing the crime to which he pleaded guilty?

2. Did the trial court err in denying, without a hearing, appellant's motion under 28 U.S.C. Section 2255, where said motion, the files and records of the case conclusively show that appellant is entitled to no relief?

[C]

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STATE OF NEW YORK

IN SENATE

JANUARY 18, 1891

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

FOR THE YEAR 1890

ALBANY: PUBLISHED BY THE STATE PRINTING OFFICE.

1891

NEW YORK: 1891.

RECEIVED JANUARY 20 1891

STATE OF NEW YORK

COMMISSIONERS OF THE LAND OFFICE

REPORT

FOR THE YEAR 1890

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1

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,203

WILLIAM H. COATES, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant was indicted on September 24, 1956, with two others on three counts for violation of the federal narcotic laws (J.A. 4-6). On September 28, 1956, he was arraigned and entered a plea of not guilty (J.A. 1). An attorney was at first appointed by the trial court, but was later permitted to withdraw when, on November 7, 1956, private counsel, H. Clifford Alder, was retained by the appellant (J.A. 1).

On January 8, 1957, the appellant was granted leave to withdraw his plea of not guilty and to enter a plea of guilty to one of the three charges against him, the sale of narcotics (J.A. 1). The transcript of the proceedings of January 8, 1957 (J.A. 7-12), reflects that appellant's retained counsel, a respected and experienced criminal law attorney, advised the trial court that he and the appellant had previously decided that appellant would plead guilty to one count of the indictment and that this disposition had been discussed with the prosecutor. However, counsel, obviously out of an abundance of caution

and undoubtedly to protect himself, observed to the court that, in his opinion, the appellant had been using narcotics that morning and that he (counsel) wanted to be absolutely sure that appellant was "in his right mind when he enters a plea of guilty" (J.A. 7).

Chief Judge Laws, apparently equally on guard, determined that he would require an examination by Dr. Thomas E. Griffin, Chief, at the time, of the Legal Psychiatric Services, D.C. Department of Welfare, before accepting the plea. Consequently Dr. Griffin, who is and was at the time in question not only a psychiatrist but the supervisor of the drug addict probationary program in the District of Columbia, was thereupon requested to examine the appellant. The doctor reported his opinion that same day that the appellant was "mildly under the influence of narcotics," having used them earlier that morning, but that "he is well enough in control of his faculties to be able to understand the proceedings against him, to assist in his own defense, and to plead to the charges pending against him" (J.A. 12-13).

Upon receipt of Dr. Griffin's report, later that same day, the trial court carefully questioned appellant before accepting his plea. The appellant gave affirmative responses to the court's inquiries as to: (1) whether "your counsel has explained to you what this is about;" (2) whether "you are fully familiar with what you are pleading to;" (3) whether "you know perfectly well what you are doing;" (4) whether "you understand everything that is going on;" (5) whether "you are * * * pleading guilty * * * because you are guilty and for no other reason whatever?" (J.A. 11).

Two months later, on March 8, 1957, still represented by retained counsel who had previously demonstrated his conscientiousness at the time of plea, the appellant appeared before the trial court for sentencing (J.A. 14). The record is barren of any misgivings expressed by the appellant with regard to his guilty plea, theretofore entered, and of course, no allegation was made by the appellant in his Section 2255 motion that he was at that time under the influence of narcotics or otherwise impeded from acting intelligently at his sentencing.

Finally, significantly enough, a year and a half later, on October 30, 1958, the appellant, for the first time, by his motion to vacate sentence, filed in the trial court, pursuant to 28 U.S.C., Section 2255, alleged that he was dissatisfied with the circumstances surrounding his plea and that he was incompetent when said plea was entered. Appellant also alleged in his motion to vacate that he had been entrapped into committing the crime to which he pleaded guilty (J.A. 17-24).

On November 13, 1958, Judge F. Dickinson Letts of the trial court, without holding a hearing, issued an Order denying appellant's motion under 28 U.S.C., Section 2255, on the grounds that "the motion and files and the records of the case conclusively show that the prisoner is entitled to no relief" (J.A. 16).

On November 21, 1958, appellant filed with the trial court an application for leave to appeal in forma pauperis from the Order of denial of his motion to vacate of November 13, 1959 (J.A. 24-25).

On November 25, 1958, Judge Letts of the trial court denied appellant's application to appeal in forma pauperis on the grounds that the "appeal is frivolous, without merit and not taken in good faith" (J.A. 25).

Appellant has since been granted leave to proceed on appeal without prepayment of costs by this court.

STATUTES INVOLVED

Title 28 U.S.C. § 2255 provides, in pertinent part:

Federal custody: remedies on motion attacking sentence.—A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time. Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

An appeal may be taken to the Court of Appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

Rule 11, Federal Rules of Criminal Procedure, provides as follows:

"A defendant may plead not guilty, guilty or with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty, and shall not accept the plea without first determining that the plea is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or if a defendant corporation fails to appear, the court shall enter a plea of not guilty."

SUMMARY OF ARGUMENT

I

The appellant has not sustained his burden under 28 U.S.C., Section 2255, of showing either that he was in fact incompetent when he pleaded guilty or that the court abused its discretion in accepting his guilty plea in view of the on-the-spot examination and report of the highly qualified doctor reflected in the files and records of this case and the trial court's own careful and material inquiries. Furthermore, the judgment of guilty by the court below cannot be otherwise vacated on appellant's allegation that he was entrapped into committing the crime. Consequently, in view of all of the foregoing, no manifest injustice is shown here.

II

The trial court did not err in denying appellant's motion to vacate without a hearing since the files and records of the case conclusively show that the appellant is entitled to no relief.

ARGUMENT

I. The Burden in Establishing Relief Under 28 U.S.C., Section 2255, Falls Squarely Upon The Convicted Party, And That "Burden Is Difficult." *Alphonzo Edwards v. United States* — U.S. App. D.C. —, 256 F. 2d 707, 798 (1958).

A. Appellant Has Not Satisfied His Burden Of Showing That He Was Incompetent To Plead Guilty.

On the morning of January 8, 1957, counsel for the appellant in the forum, H. Clifford Alder, and former Chief Judge Bolitha J. Laws, were both concerned with the possibility that the

appellant might be incompetent to plead guilty because of the use of narcotics. Consequently, Judge Laws determined that a medical examination with regard to this question should be made by Doctor Thomas E. Griffin, Chief, at the time, of the Legal Psychiatric Service, D.C. Department of Welfare. Such an examination was conducted by Dr. Griffin and later that same afternoon he made a report to the court, which, in pertinent parts, reads as follows:

"As a result of that examination, it is my opinion that the said William H. Coates, is a user of narcotic drugs, that he last used such drugs about 9:15 a.m. today and that he was, about 11:00 a.m., mildly under the influence of narcotics. It is my opinion, however, that he is well enough in control of his faculties to be able to understand the proceedings against him, to assist in his own defense, and to plead to the charges pending against him.

It is my further opinion that he will soon begin to suffer from symptoms of withdrawal from drugs and that these symptoms will reach their maximum in about 24 hours. From a medical viewpoint, therefore, he should be admitted to a hospital for treatment during this withdrawal period."

This court is asked to take judicial notice of the fact that Dr. Thomas E. Griffin is and was not only a psychiatrist, but also, at the time in question, was the chief medical officer in charge of the supervision of drug addicts released under the "Hospital Treatment for Drug Addicts Act for the District of Columbia" (Sections 601 et seq., Title 24, of the D.C. Code, as amended). It is apparent that Dr. Griffin was exceptionally well qualified to make such an examination and report.

Upon receipt of this unqualified opinion, of this peculiarly qualified Doctor, the trial court proceeded to make its own careful inquiries of the appellant, to the following effect:

"The COURT. Mr. Coates, your counsel has explained to you what this is about, has he?

The DEFENDANT. Yes, sir.

The COURT. And you are fully familiar with what you are pleading guilty to, is that right?

The DEFENDANT. Yes, sir.

The COURT. And the doctor has been over you today and he says that you have had some narcotics but that he thinks you know perfectly well what you are doing. You do?

The DEFENDANT. Yes, sir.

The COURT. You understand everything that is going on?

The DEFENDANT. Yes, sir.

The COURT. And you are, therefore, pleading guilty to Count 9 which charges you with violation of the narcotic laws because you are guilty and for no other reason whatever?

The DEFENDANT. Yes, sir.

In view of the on-the-spot medical report and the trial court's thorough inquiries, it is submitted that appellant *was* competent when he pleaded guilty and appellant has not sustained his burden of proving otherwise.

The record, both in what it contains and in what it does not contain, further estops appellant on this point. Significantly enough, although the appellant was immediately committed to jail after his guilty plea and was removed from further contact with narcotics, no motion was ever made by him to set aside or withdraw his guilty plea. Two months later, the appellant appeared before the trial court for sentencing, still represented by the same experienced trial lawyer who had already once demonstrated his conscientiousness with regard to his client's interests. If the appellant, or his counsel, had any misgivings about his guilty plea, neither utilized the opportunity to express them at that time; and, of course, no suggestion has been made that appellant was under the influence of narcotics or otherwise impeded from acting intelligently or complaining at his sentencing. Finally, it is significant to note that another whole year and a half elapsed before the appellant provided his first indication that he felt he was incompetent at the time he pleaded guilty and therefore was dissatisfied with the cir-

cumstances surrounding his plea; and appellant has yet to deny his guilt.

All that appellant has contended is embodied in his naked allegation that he was incompetent at the time he entered his plea of guilty, an allegation, which, it submitted, most likely, was inspired as an afterthought since he has been in jail, being put, as it was, in a motion that was filed a year and a half after sentence. In contradistinction to this, the government produced the direct, on-the-spot medical examination made of appellant by Dr. Griffin plus the trial court's own careful and materially thorough inquiries of the appellant as to his competency and, finally, a barren record, except for the subject motion, of any complaint on appellant's part as to his supposed incompetency. It is submitted that appellant has failed to carry his burden of showing that he was incompetent at the time of the guilty plea.

B. Appellant Has Not Satisfied His Burden Of Showing That The Trial Court Abused Its Discretion In Accepting The Guilty Plea Of Appellant.

The condition of the appellant on January 8, 1957, is the point in issue. As shown above, both Chief Judge Laws and H. Clifford Alder, appellant's trial counsel, were concerned with the possibility that appellant might be incompetent to plead guilty. Consequently, Judge Laws ordered that a medical examination on this question be performed by Dr. Griffin. It was only after the resulting medical clearance had been obtained plus the trial court's own inquiries that Judge Laws and the experienced attorney for the appellant were apparently satisfied that appellant was competent to plead.

The opinion given by Dr. Griffin was not, as suggested by the appellant (Br. 2), a legal one, but a medical one. The doctor did not assert any legal *conclusion* that the appellant was *competent*. He very exactly *found* that, in spite of fact that appellant was *mildly* under the influence of narcotics, he was nevertheless "well enough in control of his faculties to be able to understand the proceedings against him, to assist in his own defense, and to plead guilty to the charges pending against him." Certainly, Chief Judge Laws had a judicial right, indeed a judicial duty, to rely on such a medical finding and

opinion. Moreover, the trial court went further and made its own careful inquiries of the appellant before finally accepting his guilty plea. It is submitted that there certainly was no abuse of discretion here, and appellant has not sustained his burden of showing otherwise. Cf. *United States v. Lester*, 247 F. 2d 496, 500-1 (2nd Cir. 1957).

The instant brief of appellant attempts to interject into this matter an alleged abuse of discretion on the trial court's part for failing to commit the appellant to a *mental* hospital for observation, under the provisions of Section 301, Title 24, of the D.C. Code, as amended. It is submitted that nothing in the record of this case justifies the presence in this matter of any question concerning appellant's mental competency, in the *psychiatric* sense. The salient question which the trial court was confronted with on January 8, 1957, was whether the appellant's *medical, not psychiatric*, condition was such that he could plead guilty "voluntarily with understanding of the nature of the charge," in conformity with Rule 11 of the Federal Rules of Criminal Procedure.

Authorities are too numerous to cite to bear out the proposition that a person under the influence of narcotics, *mildly*, or otherwise, can carry on even a highly skilled or technical job or transaction. (See pages 242 through 245 of the treatise, *The Pharmacological Basis of Therapeutics*, by Goodman and Gilman, Second Edition, 1955, published by McMillan.) According to one of the foremost authorities in the field of narcotics, Doctor Harris Isbell, the director of the Addiction Research Center, Clinical Division, Public Health Service Hospital, in Lexington, Kentucky, the only way possible to determine the *mental capacity* of an individual using narcotics, because of the well-known phenomenon of "tolerance to drug effect," is by a direct, on-the-spot examination of the subject persons. (See *Trends In Research on Opiate Addiction*, an article contained in the publication, "Transactions and Studies of the College of Physicians of Philadelphia," Volume 24, No. 1, June, 1956, pages 1-9; and see, hearings on the same point, an article jointly authored by Doctors Harris Isbell and Walter M. White, entitled, *Clinical Characteristics of Addiction*, appearing in Volume 14, No. 5, May, 1953, page 560, of the pub-

lication, *American Journal of Medicine*.) This direct, on-the-spot medical examination is exactly what was performed in this case, and, it is submitted, again, that Judge Laws exercised sound discretion in relying on same.

C. The Judgment of Guilty By The Court Below Cannot Be Otherwise Vacated on Appellant's Allegation That He Was Entrapped Into Committing The Crime To Which He Pleaded Guilty.

As for appellant's contention that he was entrapped into committing the crime, it suffices to say that said claim cannot, as a proposition of law, be entertained in a motion under 28 U.S.C., Section 2255, inasmuch as such a claim is a matter of defense to be raised at the trial. *Frazer v. United States*, 233 F. 2d 1 (9th Cir. 1956); *Davis v. United States*, 205 F. 2d 516 (5th Cir. 1953). Furthermore, a plea of guilty constitutes a "waiver of all defenses known and unknown." *United States v. Gallagher*, 183 F. 2d 342 (3rd Cir. 1950), *cert. denied*, 340 U.S. 913 (1951); *Smith v. United States*, 205 F. 2d 768 (10th Cir. 1953); *Godish v. United States*, 182 F. 2d 342 (10th Cir. 1950); *Alphonzo Edwards v. United States*, — U.S. App. —, 256 F. 2d 707 (1958). Consequently, appellant has not sustained his burden of showing that the judgment of guilty by the court below should be vacated because of his allegation of entrapment.

D. There Has Been No Showing of Manifest Injustice Here.

A plea of guilty may not be withdrawn except to correct manifest injustice. *Alphonzo Edwards v. United States*, *supra*. None has been shown in this case. Quite to the contrary, because of the conscientiousness of a well-known and experienced trial attorney and because of the caution and sound discretion of a former chief judge of the District Court, appellant's rights were fully protected in order to prevent any possible injustice.

II. The Trial Court Did Not Err In Denying Appellant's Motion To Vacate, Without A Hearing, Because Appellant's Motion And The Files And Records Of The Case Conclusively Show That Appellant Is Entitled To No Relief.

The trial court denied the appellant's motion filed under 28 U.S.C., Section 2255, without a hearing, and, it is submitted, quite properly so.

The appellant claimed in his motion that he was incompetent to plead guilty and that he was entrapped into committing the crime to which he pleaded guilty. It is submitted that the question of the appellant's competency to plead guilty is disposed of by the files and records of this case. The appellant does not now, nor has he, produced any expert opinion by affidavits or proffer of testimony, which overcomes or contradicts the on-the-spot examination of Dr. Griffin. Again, it was the condition of the appellant on January 8, 1957, that is crucial in this case and, as the appellant himself says (Br. 3), the record speaks for itself. Furthermore, on this same parallel, it is submitted that the files and records of this case properly demonstrated to Judge Letts that the court below had not abused its discretion in accepting the plea of guilty.

Finally, appellant's contention that he was entrapped into committing the crime to which he pleaded guilty, has no merit as a matter of law, as pointed out above, and will not lie in a Section 2255 motion. (See cases cited supra under I(c).)

In view of all of the foregoing, it is submitted that the appellant's motion, and the files and records of the case, conclusively show that the appellant is entitled to no relief, and, therefore, the court below was quite correct in denying appellant's motion to vacate without a hearing, a disposition which is permitted by the statute itself, 28 U.S.C., Section 2255.

CONCLUSION

Accordingly, it is respectfully submitted that the judgment of the court below should be affirmed.

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